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Author(s): Jesus De Galindez

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# SPAIN

JESUS DE GALINDEZ\*

The present Spanish regime offers a picture not of the achievement of balance between man's right to knowledge and the defense of national security, but rather an illustration of the practical abuses to which a totalitarian "anti-communist" ideology may lead, an ideology rooted in the conviction that all political and scientific life must be under the control and direction of the state.

The low esteem in which individual rights are held was vividly demonstrated by an incident at the most recent Legal Congress of the Falange. The President of the Spanish Supreme Court, Professor José Castán Tobeñas, proposed for discussion the topic of "Human Rights." The proposal was rejected by the delegates because they thought discussion of the topic might be interpreted as a surrender to pressure from the United Nations. Spain had just been admitted to UNESCO.

## I. THE SECOND REPUBLIC AND THE CIVIL WAR

Any understanding of the present regime and its ideology would be incomplete without at least a brief examination of the political history of Spain immediately prior to the advent of Franco.

Following upon a dictatorship sanctioned by the crown, the Second Spanish Republic approved its Constitution in December, 1931. Inspired in great part by the constitution of the Weimar Republic, this document contained separate bills of individual and social rights, the former in the familiar liberal wording, the latter in advanced form,<sup>1</sup> especially in its reference to property.<sup>2</sup> In 1933, however, political disturbances brought forth a Law of Public Order,<sup>3</sup> which allowed the government to adopt emergency measures suspending some of the rights guaranteed by the Constitution. Of all the early laws relating to man's rights, this restrictive provision is practically the only one to survive the downfall of the Republic. It is still in force, though slightly amended in 1945 to serve the purposes of the Franco regime. More important than an examination of constitutional provisions, however, is a study of the political his-

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\* Permanent Observer for the Autonomous Basque Government-in-Exile to the United Nations; Lecturer, Department of Public Law and Government, Columbia University.

1. See, *e.g.*, Art. 45. "Work in all its different forms is a social duty and will enjoy the protection of the laws. The Republic will assure all workers the necessary conditions for a dignified existence. . . ."

2. See, *e.g.*, Art. 44. "All the wealth of the country, whoever . . . the owner, is subordinated to the interest of national economy . . . [P]roperty of all kinds . . . can be expropriated for reasons of social utility upon adequate indemnification . . . [and upon adequate compensation] property can be socialized. Public services and exploitations affecting the common interest can be nationalized [if] required by social necessity. . . ."

3. See PITA BLANCO, *JUSTICIA MILITAR*, 854 *et seq.* (1947).

tory of the Republic. Its brief span was the stage for an endless fight between freedom and reaction—a conflict which on three occasions during the last hundred years burst into civil war. As soon as the intolerance of one or another side became stronger than its prudence and respect for the other's ideas, cataclysms of military uprising, revolution and dictatorship shook the country. The Civil War of 1936-1939 and the present Franco regime are merely extreme swings of the political pendulum, though complicated by the totalitarian ideologies of our day.

Despite the sweeping victory of the republican and socialist candidates in the election of 1931, the rightist elements soon recovered from their confusion, and the Spanish people found themselves divided into two multipartite blocs. The Left consisted of the Socialists, who were the most powerful, moderate republican groups like the Catalanian Esquerra and the Radical Party, more radical republican groups like the Republican Left and the Radical Socialist Party, and the numerically weak Communist Party. The strongest group on the Right was the Spanish Confederation of Autonomous Rightist Forces (CEDA), a coalition under the leadership of the Catholic Gil Robles. Though its composition was so diverse as to include liberal Christian-Democrats and reactionary agrarian leaders, its members concurred in accepting the institutions of a Republic. Also on the Right were the Monarchists and a small group of Fascists. Fitted into the Center were the Basque National Party, a Catholic-democrat group, and small rightist republican groups, among them one led by the President of the Republic, Dr. Alcalá Zamora.

In accordance with the power granted him under the Constitution of 1931, President Alcalá Zamora dissolved the Parliament twice during his term of office, once in 1933 and again at the end of 1935. The first Parliament, elected in 1931, had a large leftist majority, the second, elected in 1933, was controlled by a center-rightist coalition dominated by the CEDA; the third Parliament, that of 1936, again manifested a strong leftist majority.

Throughout the duration of the Republic the major blocs were generally prepared to listen to the ideas of the other groups, but on occasion individual units of one side or the other abandoned the methods of peaceful persuasion and resorted to violence. The first rebellion was of Monarchists and Army leaders; it ended abruptly in August, 1932, when its leader, General Sanjurjo, was taken prisoner. Sentenced to death, Sanjurjo was later pardoned. The second rebellion, a Marxist revolution in October of 1934 against the rightist (CEDA) Government, was also quickly defeated; some of its lesser leaders were executed. The third rebellion, begun in July of 1936 against the second leftist government, led to the Civil War. Primarily motivating all three uprisings was the rebels' desire not so much to obtain control of the government as to op-

pose or advance the reform of the traditional structure of Spain in all its aspects, especially the economic.

While the battles for reform were in progress the totalitarian parties began to grow. The Communist Party, already some years old when the Second Republic was founded, never did achieve strength in Spain. In the first two Parliaments—those of 1931 and 1933—it was able to elect only one deputy. The Party's success in 1936 in electing 15 out of 473 deputies was attributable to its participation in the Popular Front, an election coalition of liberal and radical elements which was generally victorious. The fascists arose in two different groups: the JONS, organized at the end of 1931 and similar to German nazism; and the Spanish Falange, organized in 1933 in the style of Italian fascism. Shortly after the latter's formation the two united into a single entity, under the leadership of the falangist Primo de Rivera, Jr. He alone was able to obtain a seat as a congressman in the Parliament of 1936.

The conspiracy responsible for the Civil War had causes deeper than the leftist election sweep of 1936. As early as the spring of 1934 the Monarchist leaders had received official promises of help from the Italian fascists. When President Alcalá Zamora dissolved the Parliament in 1935 the plotters attempted to persuade the Minister of War Gil Robles to initiate a rebellion. But Gil Robles, chief of the CEDA, was a democrat, and he hoped that the Right would remain in power through constitutional means. His surprise defeat at the polls cost him the leadership of the rightist forces, which now turned impetuously towards the partisans of violence. Among these were Monarchist leaders like Calvo Sotelo, military chiefs like General Sanjurjo, and falangists like Primo de Rivera, Jr.

The Civil War began with the uprising of almost the entire army and a great part of the police; the Republican Government responded by arming the people's militia. Abuses and murders were committed on both sides. On both sides the totalitarian groups were small minorities, but they imposed their methods of violence and the discipline of intolerance upon their collaborators. In defense of the Republican side, however, it may be noted that at the outset the government lacked public forces to control unruly elements, while abuses on the rebel side were committed by the public forces themselves.

The strength of the competing factions was distorted by the international situation. A non-intervention agreement instigated by England was observed only by the Western democracies. Russia, a party to the treaty, aided the Spanish communists and through them the Republicans; Germany and Italy, also signatories, threw their military power on the side of the rebels.

If the Republican side had won, the moderates in that group would probably have ousted the communists from any key positions they had gained dur-

ing the Civil War. This result is indicated by the post-World War II experience of Italy and France, where the communists had been much stronger than in Spain. But the rebels won the war—and the government of General Franco, established in 1936 as provisional has perpetuated itself. Spain has now had fifteen years of experience with this totalitarian regime, a totalitarianism shaded with peculiar characteristics traceable to its original integrating elements.<sup>4</sup>

## II. FRANCO'S REGIME AND THE CHARTER OF THE SPANIARDS

Any study of human freedom under the Franco regime is necessarily difficult, for there is no organic constitution and the fundamental laws originated during different periods of the present government. The oldest is the Charter of Labor,<sup>5</sup> which was drafted in the midst of the Civil War when the fascist ideology was at its height. The most recent and perhaps the most basic is the Law on the Succession of the Head of the State.<sup>6</sup> All of the fundamental laws revolve around General Franco, head of the state and chief of the Falange, "responsible only to God and history."<sup>7</sup>

The fundamental law most pertinent to an investigation of the status of man's right to knowledge in Spain is the Charter of the Spaniards.<sup>8</sup> Superficially similar to the bills of civil rights of countries with moderate democratic regimes, the Charter can grievously mislead the uninformed. Only if we remember that it was enacted in 1945 when the victory of the United Nations in World War II had sentenced fascism to death, only if we appreciate the many exceptions made in the Charter itself through its frequent references to the "fundamental principles of the State,"<sup>9</sup> only if we study the totalitarian principles<sup>10</sup> announced during the fascist enthusiasm and still in force (along with

4. The present Falange party comprises Carlists (Monarchist) as well as Fascists. See note 12 *infra*.

5. Boletín Oficial [here-in-after B.O.], March 10, 1938.

6. B.O. July 27, 1947. Article 10 of this Law lists as fundamental laws of the state: the Charter of the Spaniards, the Charter of Labor, the Law Establishing the Parliament, the Law on the Succession of the Head of the State, the Law of National Referendums, and "any other which in the future can be enacted if it receives such a rank."

7. "To be Head of the State is the right of the Chief of Spain and of the Crusade, Generalissimo of the Armies, D. Francisco Franco Bahamonde." The Law on the Succession of the Head of the State, *supra* note 6, Art. 2. "The Spaniards owe . . . loyalty to the Head of the State and obedience to the laws." The Charter of the Spaniards Art. 2, July 17, 1945, B.O. July 18, 1945. "The supreme power to enact legal provisions of a general character will continue to belong to the Head of the State. . . ." Preamble, Law Establishing the Parliament, July 17, 1942, B.O. July 19, 1942.

8. B.O. July 18, 1945.

9. Charter of the Spaniards, Art. 12, states that "Every Spaniard can freely express his ideas . . . so long as they do not oppose the fundamental principles of the state" (Emphasis added).

10. The bluntest statement of these principles is to be found in the preamble of the Charter of Labor, where it is stated "Renewing the Catholic tradition, of social justice and high human sense, which inspired our legislation of the Empire, the national state, inasmuch as it is a totalitarian instrument at the service of national integrity and syndicalist as a reaction against liberal capitalism and marxist materialism, undertakes the task of

the legislation implementing those principles) : only then will it be possible to perceive the true relation between individual rights and the power of the state in present-day Spain. We then see a totalitarian fascist regime, somewhat different from those of Germany and Italy because of the emphasis on the leader Franco rather than on "the Party,"<sup>11</sup> but a totalitarian regime nonetheless, and one much influenced by the intolerance of the Catholic hierarchy. In short, the individual rights set forth in the Charter are not protected at all. Article 34 explicitly requires that the principles enunciated be implemented by legislation, yet the laws thus far enacted provide only for repression.

*The Right of Association: Political Parties and Labor Unions*

According to Article 16 of the Charter of the Spaniards, "Spaniards can meet and associate freely for legal purposes and in accordance with the provisions of the laws." But when the "legal purposes" and "provisions of the laws" are examined, it becomes apparent immediately that in Spain the right to associate freely is an illusion.

In Franco Spain the only legally sanctioned political party is the Spanish Traditionalist Falange.<sup>12</sup> All other political parties, whether right, left or center, are outlawed;<sup>13</sup> attempts to reorganize them clandestinely subject the or-

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fulfilling—with militant, constructive and seriously religious spirit—the revolution which Spain has in progress, designed to restore to Spaniards, once and forever, Fatherland, Bread and Justice." Similar principles are stated in other, though not fundamental laws.

11. See note 7 *supra*.

12. "Spanish Falange and Carlists, with their present organization and members, shall join together, under my leadership, in one lone political entity of national character which, for the time being, will be called Spanish Traditionalist Falange and of the Jons. . . . All other political organizations and parties are dissolved." Decree for Unification, Art. 1, B.O. April 29, 1937.

13. The outlawing was accomplished by a series of decrees. The first one stated: "All political or syndical parties and organizations which . . . have been integrated in the . . . Popular Front, and also all organizations which have participated in the opposition maintained against the forces collaborating in the National Movement, are outlawed." Decree of September 13, 1936, B.O. Sept. 16, 1936. This still left several parties on the Franco side, but the Decree of Unification, *supra* note 12, dissolved all of these except the Falange.

The outlawry was made more specific in the Decree of Political Responsibilities, B.O. Feb. 13, 1939, which established a special court to punish the following parties, labor unions and organizations: "Acción Republicana, Izquierda Republicana, Partido Federal, Confederación Nacional del Trabajo, Unión General de Trabajadores, Partido Socialista Obrero, Partido Comunista, Partido Sindicalista, Sindicalista de Pestaña Federación Anarquista Ibérica, Partido Nacionalista Vasco, Acción Nacionalista Vasca, Solidaridad de Obreros Vascos, Esquerra Catalana, Partido Galleguista, Partido Obrero de Unificación Marxista, Ateneo Libertario, Socorro Rojo Internacional, Partido Socialista Obrero Unificado de Cataluña, Unión de Rabasaires, Acción Catalana Republicana, Partido Catalanista Republicano, Unión Democrática de Cataluña, Estat Catalá, all the masonic lodges, and any other affiliated entities, groups or parties, or of the character analogous to those above mentioned. . . ." This list comprises marxist, republican, regionalist and Catholic parties, masonic lodges and all labor unions. These organizations have widely different ideologies and several of them never participated in the Popular Front, though all were on the loyalist side during the Civil War. By this new Decree of 1939 these parties and organizations, already dissolved in 1936, suffered "the loss of their rights of any kind and of all of their properties."

ganizers to criminal sanctions. Thus the Criminal Code of 1944, still in force, defines as unlawful "the associations, political organizations, political parties and other entities outlawed, and any other of similar trends even if they are reconstituted under new structure and name."<sup>14</sup> In view of the fact that practically all parties other than the Falange have been specifically outlawed at one time or another, and in view of the catch-all clause "any other or similar trends," additional provisions would seem unnecessary. Nevertheless, unlawful associations are further defined as "those groups or associations which tend to weaken national sentiment,"<sup>15</sup> and "those groups attempting the establishment of a regime based upon the division of Spaniards into political groups or classes in any way."<sup>16</sup> Other sections of the Criminal Code punish the propagation of ideas related to the proscribed political groups.<sup>17</sup> These laws indicate that the right to associate freely is non-existent in Spain. The facts tell the story even more emphatically.

Throughout the Franco regime Spanish citizens have been jailed for attempting to reorganize parties such as the anti-communist Basque National Party and its labor union, the Brotherhood of Basque Workers. Many have been in jail for years—thus far denied not only a trial but even an arraignment, although arraignment within 72 hours is "guaranteed" by Article 18 of the Charter of the Spaniards. Others, more fortunate, have had their trial and been sentenced to jail—not for attempting to overthrow the government by violence, but for forming groups that "tend to weaken national sentiment."

The freedom of association guaranteed by the Charter is equally illusory in the area of labor organizations. All strikes and some lock-outs are punished as mutiny.<sup>18</sup> But of far greater significance is the fact that there is only one official labor union in Spain today. Its leaders are required to be active members of the Falange. Other organizations existing before the Civil War, whether marxist, anarchist or Christian-democrat, have been dissolved.<sup>19</sup> The present labor union structure is ordained by the Charter of Labor:

1. The National-syndicalist Organization of the State shall be inspired by the principles of Unity, Totality and Hierarchy.

2. All elements of the economy shall be organized by branches of production or services into vertical labor unions. Liberal and technical professions shall also be organized in a similar way, in accordance with the laws.

3. The vertical labor union shall be a Public Law corporation, formed to integrate in one unified organization all the elements dedi-

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14. CRIMINAL CODE, December 23, 1944 [hereinafter CRIM. CODE 1944], Art. 173, § 3, B.O. Jan. 13, 1945.

15. CRIM. CODE 1944, Art. 173, § 1.

16. CRIM. CODE 1933, Art. 173, § 4.

17. CRIM. CODE 1944, Art. 251 *et seq.*

18. CRIM. CODE 1944, Art. 222.

19. See note 13 *supra*.

cating their activities to the fulfillment of the economic process, hierarchically ordained under the direction of the State.

4. The hierarchies of a Labor Union must be composed of active members of the Spanish Traditionalist Falange and of the J.O.N.S.<sup>20</sup>

That there is but one official party in Spain and one official labor union in Spain is particularly restrictive of the right to knowledge, for Spanish political parties and labor unions through their discipline and ideological programs have influenced the life of the nation far more profoundly than any law.

### *Control of Publications and Universities*

Article 12 of the Charter of the Spaniards proclaims that "every Spaniard can freely express his ideas . . . as long as they do not oppose the fundamental principles of the state." On its face this provision would not seem to restrict a free press unduly, but again this illusion is effectively destroyed by reference to the laws which embody these "fundamental principles." The Decree of April 22, 1938, denounces "the damages caused to the mass of readers by the excess of democratic freedom" and states that "journalism cannot live outside the State."<sup>21</sup> Through its Ministry of Information the state has accordingly undertaken: (1) to fix the number and size of periodical publications; (2) to control the appointment of editorial staffs; (3) to regulate the profession of journalism; (4) to supervise the activities of the press; and (5) to provide for its censorship.

Among the victims of the Civil War and the new regime are about half of the pre-war newspapers and magazines, including all of those which in one way or another supported the defeated side—even the well-known Madrid newspaper *El Sol*. Their buildings and presses were confiscated and turned over to new falangist newspapers. And although its property was never confiscated, the best Catholic newspaper, *El Debate* of Madrid, has failed to appear since the war, probably because its owners prefer not to submit to state control and censorship.

One of the most drastic of state regulations provides that the Ministry of Information must approve the appointment of the chief editor of every newspaper, regardless of the paper's ideological coloring, and that the Ministry can replace him at any moment on a finding that he "is harmful to the interests of the State."<sup>22</sup> Furthermore, the Minister can punish "all writings attempting to diminish, directly or indirectly, the prestige of the Nation or of the Regime, or to disturb the work of the Government in the new State, or to propagate pernicious ideas among persons who are intellectually weak,"<sup>23</sup> as well as "dis-

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20. Charter of Labor, *supra* note 5, § 13.

21. Law of the Press, April 22, 1938, B.O. May 1, 1938.

22. *Id.* Art. 8.

23. *Id.* Art. 18.



obedience, passive resistance, and in general any offence against the rules fixed by the services competent in the field of the press."<sup>24</sup> In short, the Ministry of Information determines what may not be written, and what must be written, always in the interest of the state.<sup>25</sup>

A similarly rigid censorship is imposed on the radio.<sup>26</sup> Nor has the Franco regime overlooked the effectiveness of books in the struggle of ideas. With the birth of the present regime special committees were created to cleanse public and university libraries of all books and publications "opposing the purposes of the National Crusade."<sup>27</sup> There exists today, in addition, a rigid pre-publication censorship for all books. And to these official limitations on the free circulation and publication of literature must be added the non-official censorship wielded by the Church, a censorship especially effective in Catholic Spain.

Is the guarantee of freedom of ideas illusory in the universities as well? An affirmative answer is suggested by the fact that in 1939, at the end of the Civil War and even before the enactment of the present governing rules, the Presidents of the Universities of Madrid and Barcelona fled from Spain. The Presidents of the Universities of Granada and Oriado were less fortunate. They were shot.

The Organic Law now governing the universities declares in its Preamble that one of the objectives of the present regime is to "convert the University into the most solid stronghold of Falangism."<sup>28</sup> Article 4 of the same law emphasizes this purpose in its statement that "the Spanish University, in harmony with the ideals of the national-syndicalist State, adapts its teaching and educational plan to the program of the movement."

This goal is achieved in part by compelling attendance at courses on falangist political education. To guard against deviations from their educational function, professors are required to obtain a certificate of the General Secretary of the Falange accrediting their "solid adherence to the fundamental principles of the state."<sup>29</sup> Nominees for the presidency of universities or the directorship of superior colleges are required also to be *active* members of the Falange;<sup>30</sup> their appointment and dismissal are in the hands of the Minister of National Education.<sup>31</sup> The regime is thus assured that only official ideas are taught in the

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24. *Ibid.*

25. Thus the newspapers carried no account of the recent student attacks upon Madrid Police headquarters until several days after the event. This delay is perhaps best explained in terms of the necessity for careful consideration of how best to report these incidents in order to do the least possible disservice to the regime.

26. See Decree on Control of Broadcasting Services, Aug. 4, 1944, B.O. Aug. 9, 1944.

27. Order on Censorship of Books, April 29, 1938.

28. Organic Law of the Universities, July 29, 1943, B.O. July 31, 1943.

29. *Id.* Art. 58(d) (4).

30. *Id.* Art. 40.

31. *Id.* Art. 43.

universities. These precautions, together with the expurgation of the university libraries, make it almost impossible for the student to be "misled."

This brief account should be enough to suggest the totalitarian control imposed upon the development of youth and upon the expression of thoughts through the press, books and radio. If one also takes into account the provisions of the Criminal Code punishing the propagation of ideas similar to those maintained by outlawed parties and organizations,<sup>32</sup> there can be little doubt about the cast-iron strait-jacket which has been clamped upon the Spanish mind.

*The State's Catholic Religion: The Concordat and Its Political Consequences*

Another aspect of freedom of thought, the freedom of religious belief and worship, has peculiar characteristics in Spain. Article 6 of the Charter of the Spaniards proclaims:

The belief and practice of the Catholic Religion, being that of the Spanish State, shall enjoy official protection. No one shall be disturbed because of his religious belief, nor in the private exercise of his worship. No ceremonies or external demonstrations other than those of the Catholic Religion will be allowed.

Thus Roman Catholicism is made Spain's official religion. Divergent religious beliefs and private worship are tolerated, but public worship is prohibited. This provision for a protected Catholic Church does not mean, however, that there exists in Spain a fountain of ideas independent of state control. Article 7 of the Concordat between Spain and the Vatican declares: "For the appointment of residential Archbishops and Bishops, and of assistant priests with a right to succession, there shall remain in force the rules of the Agreement signed between the Vatican and the Spanish Government on June 7, 1941."<sup>33</sup> This Agreement revived in a slightly different form the old right of *Patronato* granted to the Spanish kings: the Spanish government initiates the filling of any vacancy in the hierarchy by proposing to the Vatican six candidates from whom the appointee will be selected. This system has been criticized by an American Catholic magazine on the ground that it makes every Spanish bishop and archbishop the political child of the government which proposed him.<sup>34</sup>

The resulting political subservience of the Church was strikingly revealed two years ago. A few members of the Basque clergy, a group hostile to the Franco regime, clandestinely published a newspaper criticizing government policies. The Franco-appointed bishops prohibited the newspaper, threatening to visit heavy ecclesiastical punishment upon those who should

32. See note 17 *supra*.

33. B.O. June 17, 1941.

34. 58 COMMONWEAL 578 (Sept. 1953).

edit, write, distribute or read such a publication. Thus the armory of ecclesiastical sanctions was brought to the aid of the politicians.

*Analysis of a Recent Case: The Trial of Vitoria*

The effect of the Spanish regime's restrictive laws and attitudes was vividly demonstrated in the recent trials of the alleged leaders of the general strike in the city of Vitoria. In the spring of 1951 a series of general strikes occurred in several provinces. Starting in Barcelona as a spontaneous protest against an increase in transit fares and the high cost of living, the strikes spread to the Basque country as an organized political move—a dramatic demonstration of the strength of the opposition to the Franco regime. The strike in Vitoria involved no violence, but sixteen people were arrested, accused of having led the strike, and a criminal trial was organized. Almost all of the accused were members of the Catholic Nationalists, an organization whose democratic composition is characteristic of the opposition to Franco.

The District Attorney in his indictment of February 4, 1952, accused the defendants of three crimes:

*Unlawful association:*<sup>35</sup> "There has been in Vitoria for some time (the precise date of organization cannot be determined) a Council of the Basque National Party [a Christian-democrat, anti-communist organization], having as its goal reorganization and propaganda, in collaboration with the provinces of Biscay and Guipuscoa. . . . Since the middle of 1946, there has also been noted in Vitoria some elements of the organization 'Brotherhood of Basque Workers' [a labor union affiliated with the Basque National Party]. . . . One defendant . . . is known as agent of liaison between the old elements of the U.G.T. [a marxist labor union] and Socialists in Vitoria and the above-mentioned Council of the Basque National Party. . . ."

*Illegal propaganda:*<sup>36</sup> "A multigraph machine was sent to the defendants on which they printed many clandestine leaflets containing propaganda. . . . In addition to those referring to the strike . . . there were seized several documents and releases of a nationalist [Basque Autonomy Movement] character. . . . One of these was a stencil in which there was reproduced completely an article which had appeared in the newspaper Paris-Press-L'Intransigeant [and] an article under the headline 'Basque clergy protests against the misery of the people and injustice' from *Egiz* [clandestine organ of the Basque priests]. . . ."

*Mutiny:*<sup>37</sup> "In April 1951 . . . it was agreed to fix a tentative date for the strike in Vitoria; . . . the strike so prepared in Vitoria broke out on May

35. CRIM. CODE 1944, Art. 172, § 2, Art. 173, § 2, Art. 174, § 1, Art. 175, § 4.

36. CRIM. CODE 1944, Art. 251, § 3, Art. 252.

37. CRIM. CODE 1944, Art. 222, § 3, Art. 223, § 1.

2; . . . on that day sit-down strikes were declared [in some of the factories]. On the 4th, at eight o'clock in the morning, some other factories went on strike, and most of the workers in our city left their jobs, even those in construction work. It can be said that the strike was almost general. . . . That day, realizing the gravity of the strike, the authorities asked help from the Special Police. . . . On the 7th the strike continued, and the bakers threatened to join it, leaving the city without bread. . . . Sixty per cent of the 9,450 workers in Vitoria were on strike. . . ."

For each crime the District Attorney demanded sentences for the principal defendants of 5, 6 and 10 years in prison plus a very heavy fine, and for the remaining defendants slightly lesser sentences.

When this indictment was made public, the Basque Government in Exile presented to the Human Rights Commission of the United Nations a denunciation of the trial. We knew that the Commission had no power to implement the Universal Declaration of Human Rights, but we hoped that by publicizing the case we could help the defendants. We were partly right. A few weeks later, pursuant to a decree of partial political amnesty granted by Franco, the provisional release of the defendants was ordered. These same defendants, however, were almost immediately brought to trial on another illegal propaganda charge, based on the distribution of pamphlets in 1946. On April 25, 1953, all but three of these defendants, though benefitting somewhat from the aforementioned amnesty, were sentenced on this charge to several years in prison. Nor are their troubles over; they are to be tried again on March 25, 1954, on the charges of February 4, 1952, quoted above.<sup>38</sup>

An interesting aftermath of the original trial was the dismissal of the President of the Vitoria Criminal Court for "laxity" in allowing the defense lawyers too much leeway in presenting their case. In the Anglo-American judicial system such a mishap would be grounds for a new trial at most. The dismissal of the judge in the Vitoria case indicates a judiciary subservient to the ends of the executive. And these indictments and trials themselves indicate that despite the noble declarations of the Charter of the Spaniards, activities which democratic nations consider basic in the exercise of human rights are in Franco Spain punished as crimes. It is not surprising that the Legal Congress of the Falange rejected the proposal of the President of the Spanish Supreme Court, for to defend human rights in Spain today is to risk prosecution for the crime of illegal propaganda.

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38. Fifteen of the prisoners were acquitted or sentenced to terms less than the three years which they had already served. The remaining two defendants were sentenced to six years and five months in prison. See N.Y. Times, March 31, 1954, p. 12, col. 2; Time, April 12, 1954, p. 34, col. 1-2.

*Franco's Forces and Those of the Opposition*

The present Spanish regime is characterized by its own legislators as "a totalitarian instrument . . . with militant, constructive, and seriously religious spirit." The existence of a single political party, however, does not mean that all supporters of the government agree with the Falangist ideals. The origin of the Falange as a hybrid body and the fact that many of its members have joined under compulsion<sup>39</sup> have resulted in an organization of extreme heterogeneity. A disciplined minority organization like the Communist Party may be able to control the ideology and activities of its members, but in modern Spain there are at least four great blocs of diverse interests: the Army, the Church, the Falange proper and the great economic interests. These factions hang together primarily through an instinct for self-preservation and a mutual intolerance toward the ideals of freedom.

The opposition, clandestine or partially perceptible in exile, is no less complex. The Socialists predominate, both as a political party and as a syndicalist force. There are republicans of many liberal varieties; Christian-democrats and some disaffected monarchists; Basques and Catalonians whose hope is for national autonomy; and important syndicalist forces of an anarchist tendency. Finally, there is a communist minority, shunned by all others.

The bulk of these diverse forces, and of course the large neutral mass of the population, hate and condemn the excesses of the totalitarian regime. They do not agree on their programs but would cooperate, as they have before, in a coalition which respects the basic freedoms. The Spanish have always been intolerant toward the ideas of adverse groups, and they are today, as always, powerful economic interests who are unnerved by any suggestion of social advance. True fascism, however, has never attained in Spain the strength it had in Nazi Germany; nor have the communists the strength they had in France before World War II. Since Germany, Italy and France have been able to establish democratic regimes, why should not Spain be able to do the same?

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39. University students, for example, must on registration apply for membership in the Spanish University Labor Union of the Falange. Membership is automatic upon application. See also text *supra* at notes 29 and 30.